

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RONALD DAVIDSON,

Plaintiff

-vs-

BENNETT
DECLARATION

UDAY DESAI, et al.,

Docket No: 03-CV-0121

Defendants.

Floyd Bennett declares under penalty of perjury, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I was formerly employed by the New York State Department of Correctional Services (“DOCS”). At all times relevant to this lawsuit, I was employed by DOCS as a Superintendent at the Elmira Correctional Facility (“Elmira”).
2. I make this declaration in support of the defendants’ motion for summary judgment based upon my personal knowledge and review of documents pertaining to plaintiff’s incarceration by DOCS.
3. I am informed that the Plaintiff in this action alleges that I was deliberately indifferent to his medical needs. Specifically, the plaintiff claims that I:
 - a. cancelled an appointment which the plaintiff had for neurosurgery on or about December 27, 1999 “for security reasons” but refused to elaborate or set them forth in writing. (See Complaint ¶¶ 17 and 18); and
 - b. I denied the plaintiff’s request to be housed in the infirmary, due to an allergist’s

orders that he avoid dust, pollen and second-hand smoke and . (See Complaint ¶¶ 140 and 143)

I deny that I was deliberately indifferent to any of the plaintiff's needs, and will address each allegation in turn, as follows.

4. With regard to the allegation that I cancelled the plaintiff's shoulder surgery, which was scheduled for December 15, 2000, this is in error. While the surgery was indeed cancelled, I had no role in that cancellation.

5. Further, with regard to the plaintiff's request to be housed in the infirmary, I am aware of no request or authorization from medical personnel that he needed to be housed there for medical reasons. Further, the infirmary is intended for inmates that are in need of constant medical care and attention. It is not an appropriate location for long term housing of an inmate suffering from allergies.

6. Accordingly, I respectfully request that this Honorable Court grant this Motion for Summary Judgment and dismiss the plaintiff's Complaint.

DATED: November 16, 2009

/s/ Floyd Bennett
FLOYD BENNETT